

**NORTH BEAR CREEK TRACTS (VICTOR LAND DEVELOPMENT, LLC)
TWO-LOT MINOR SUBDIVISION**

STAFF REPORT FOR BOARD OF COUNTY COMMISSIONERS

CASE PLANNER:

John Lavey *JK*

REVIEWED/

APPROVED BY:

Renee Van Hoven *RV*

**PUBLIC HEARINGS/
MEETINGS:**

BCC Public Meeting: 11:00 a.m. August 16, 2007
Deadline for BCC action (35-working days): August 31, 2007

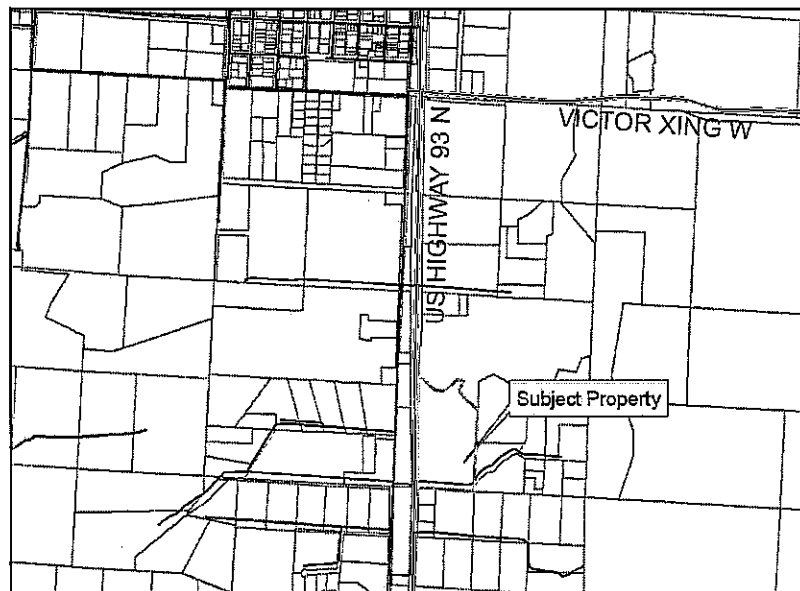
SUBDIVIDER/OWNER:

Victor Land Development, LLC
1883 Highway 93 South
Hamilton, MT 59840

REPRESENTATIVE:

Professional Consultants, Inc. 363-1201
Bill Burnett
1713 N. 1st Street
Hamilton, MT 59840

LOCATION OF REQUEST: The property is located US Highway 93 south. (See Map 1)



Map 1: Location Map
(Source Data: Ravalli County GIS Department)

**LEGAL DESCRIPTION
OF PROPERTY:**

Tract B of COS# 937 located in the SE ¼ of Section 31, T8N, R20W,
P.M.M., Ravalli County, Montana.

**APPLICATION
INFORMATION:**

The subdivision application was determined complete on July 13, 2007. Agencies were notified of the subdivision and comments received by the Planning Department not included in the application packet are Exhibits A-1 through A-4 of the staff report. **This subdivision is being reviewed under the subdivision regulations amended May 24, 2007.**

LEGAL NOTIFICATION:

No legal advertisement is required of minor subdivisions. Notice of the public meeting was placed on the published agenda of the BCC a minimum of forty-eight (48) hours prior to the meeting. Notice of the project was posted on the property and adjacent property owners were notified by regular mail postmarked July 12, 2007. No public comments have been received.

**DEVELOPMENT
PATTERN:**

Subject property	Commercial and Residential
North	Large Lot Residential/Agriculture
South	Residential
East	Large Lot Residential
West	Light commercial and Residential

INTRODUCTION

The North Bear Creek Tracts minor subdivision of 25.59 acres is located south of Victor off US Highway 93. There are two (2) proposed commercial lots within this subdivision. There are two existing businesses on Lot 1 (a road construction company and a fence pole manufacturing company). All of the existing buildings on Lot 1 were constructed prior to subdivision for lease or rent review in Ravalli County and received the appropriate permits at the time they were built. A 3,000-square foot office building is proposed to support an on-site lumberyard on Lot 2. The North Fork of Bear Creek and its associated riparian areas are located along the northern property boundary. The applicant is proposing a no-build/alteration zone from the northern property boundary to 100 feet south of the existing vegetation along the North Fork of Bear Creek.

The Montana Department of Transportation (MDT) is proposing an extension to Humdinger Lane through the subject property during the Highway 93 reconstruction project (see application). The centerline of the proposed road extension will form the boundary between Lot 1 and 2. The applicant has been granted access at this location from MDT, and the applicant is proposing a common access for Lot 1 and Lot 2 at this location until Humdinger Lane is constructed, which will most likely take place after final plat approval.

Staff recommends conditional approval of the subdivision proposal.

RAVALLI COUNTY BOARD OF COUNTY COMMISSIONERS
AUGUST 16, 2006

NORTH BEAR CREEK TRACTS
TWO-LOT MINOR SUBDIVISION

RECOMMENDED MOTION

That the North Bear Creek Tracts Minor Subdivision be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR THE SUBDIVISION

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

Notification of Proximity to Agricultural Operations. This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. *(Effects on Agriculture)*

Limitation of Access onto a Public Road. A "no-ingress/egress" restriction exists along the Pine Drive and US Highway 93 frontages of this subdivision, excepting the Montana Department of Transportation approved approach. This limitation of access may be lifted or amended only with the approval of MDT. *(Effects on Local Services and Public Health and Safety)*

Notification of Controlled Groundwater Area. This subdivision is located over the controlled groundwater area of the Bitterroot Valley Sanitary Landfill. No new wells may be drilled in this area. For more information on the controlled groundwater area, please contact the Department of Natural Resources and Conservation at 1610 S. 3rd Street W., Suite 103, PO Box 5004, Missoula, MT 59806-5004 *(Effects on Natural Environment & Public Health and Safety)*

Notification of Utility Easements. There is a utility easement traversing Lot 1 for the extension of a water line to Lot 2. No structure shall be allowed to encroach into or set upon this utility easement. This utility easement shall remain unobstructed and accessible at all times. *(Effects on Local Services)*

Notification of No-Build/Alteration Zone. Within this subdivision there is a no-build/alteration zone located on Lot 2, as shown on the plat, to restrict building in areas with riparian vegetation, possible wetlands, and open water sources. No new structure, with the exception of fences, may be constructed in this area. No new utilities, may be constructed in this area. No fill may be placed in this area and the vegetation shall be retained in its natural condition. Roads, trails, and utility crossings through this area are not permitted. Irrigation infrastructure and maintenance of the irrigation infrastructure shall be allowed. *(Effects on Natural Environment and Wildlife & Wildlife Habitat)*

Notification of "Very Limited" Soils. Within this subdivision there are areas of the property identified by the Natural Resources Conservation Service (NRCS) as potentially having soils rated as "very limited" for road construction and building sites. The approximate locations of these areas can be found on a reduced copy of the final plat. Descriptions of the severe soils in question are included as exhibits to this document [the subdivider shall include the exhibits as attachments]. *(Effects on Public Health & Safety)*

Notification of Proximity to the North Fork of Bear Creek. This subdivision is located in close proximity to the North Fork of Bear Creek. There is an inherent hazard associated with creeks, due to potential soil erosion, flooding and movement of the stream channel. It is recommended that property owners of this subdivision obtain flood insurance. *(Effects on Public Health & Safety)*

Notification of West-Nile Virus. Within this subdivision there is a pond/wetland area located on Lot 2. Although incidents of West-Nile Virus have been rare in Montana, the disease has become more prevalent in western states in recent years. Mosquitoes, the primary carrier of the virus, are typically associated with standing water as may be found in the pond/wetland area. *(Effects on Public Health and Safety)*

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

Waiver of Protest to Creation of RSID/SID. Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to, a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs. *(Effects on Local Services)*

Living with Wildlife and Riparian Covenants. (See application for required provisions.) *(Effects on Agriculture, Natural Environment, and Wildlife & Wildlife Habitat)*

Lighting for New Construction. To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off lighting is recommended for any new construction within this subdivision. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light should be fully shielded on the top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. For more information, visit www.darksky.org. *(Effects on Natural Environment, Wildlife and Wildlife Habitat, and Public Health & Safety)*

Radon Exposure. The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their homes tested for radon. Contact the Ravalli County Environmental Health Department for further information. *(Effects on Public Health & Safety)*

Control of Noxious Weeds. A weed control plan has been filed in conjunction with this subdivision. Lot owners shall control the growth of noxious weeds on their respective lot(s). Contact the Ravalli County Weed District for further information. *(Effects on Agriculture and Natural Environment)*

Required Posting of County-Issued Addresses for Lots within this Subdivision. Lot owners shall post County-issued addresses at the intersection of the driveway leading to the primary residence and the road providing access to the lot as soon as construction on the residence begins. *(Effects on Local Services and Public Health & Safety)*

Amendment. Written governing body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval.
(Effects on all six criteria)

3. The subdividers shall include an RSID/SID waiver in a notarized document filed with subdivision plat that states the following: Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. (Effects on Local Services)
4. The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. (Effects on Public Health & Safety)
5. Prior to final plat approval, the subdividers shall provide a 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot within this subdivision. Alternatively, the subdividers may provide evidence that a \$500-per-lot contribution has been made to the Victor Rural Fire Department with the final plat submittal in lieu of the required water supply or water storage for fire protection. (Effects on Local Services and Public Health & Safety)
6. The final plat shall show a no-ingress/egress zone along the Pine Drive and US Highway 93 frontages of the subdivision, excepting the Montana Department of Transportation approved approach off US Highway 93. (Effects on Local Services and Public Health and Safety)
7. The no-build/alteration zones, as shown on the preliminary plat, shall be shown on the final plat. (Effects on the Natural Environment)
8. In accordance with the requirements of the Montana Department of Transportation's (MDT) Driveway Approach Application and Permit submitted with the application, the applicant shall construct a temporary common access to meet State standards at the location specified by MDT prior to final plat approval and provide a final approach permit or other evidence from MDT that the approach meets State standards. (Effects on Local Services, Natural Environment, and Public Health and Safety)
9. The following statement shall be shown on the final plat: "This subdivision is located over the controlled groundwater area of the Bitterroot Valley Sanitary Landfill. No new wells may be drilled in this area. For more information on the controlled groundwater area, please contact the Department of Natural Resources and Conservation at 1610 S. 3rd Street W., Suite 103, PO Box 5004, Missoula, MT 59806-5004" (Effects on Natural Environment & Public Health and Safety)
10. The following statement shall be shown on the final plat: "If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the State Historic Preservation Office shall be contacted to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate". (Effects on the Natural Environment)
11. The subdivider shall abandon the existing driveway that accesses Lot 1 off Pine Drive. (Effects of Local Services)

12. The developer shall provide evidence with the final plat submittal that the pond located in the southeast corner of Lot 2 has been permitted by the Department of Natural Resources (DNRC). *(Effects on Agricultural Water Users)*
13. To mitigate impacts on the law enforcement, the subdivider shall submit a (amount)-per-lot contribution to the Ravalli County Treasurer's Office to be deposited into account for the Sheriff's Office prior to final plat approval. *(Effects on Local Service and Public Health and Safety)*

SUBDIVISION REPORT

COMPLIANCE WITH PREREQUISITES TO APPROVAL

Section 3-2-8(a) of the RCSR states that the BCC shall not approve or conditionally approve a subdivision application and preliminary plat unless it establishes by credible evidence that the proposed subdivision meets the following requirements:

A. Provides easements for the location and installation of any planned utilities.

Findings of Fact

1. The preliminary plat indicates that existing utility easements are located along US Highway 93 and Pine Drive.
2. Lot 2 will utilize a well located on Lot 1. A 10-foot wide easement is proposed over the location of the water line.
3. An easement exists for the future construction of Humdinger Lane through the subject property. It is anticipated that public utilities will be located within this easement.
4. Section 3-4-4(a)(ii)(V) of the RCSR requires that all existing and proposed utility easements are shown on the final plat.

Conclusion of Law

The proposed subdivision application provides for utility easements.

B. Provides legal and physical access to each parcel within the subdivision and the notation of that access is included on the applicable plat and in any instrument transferring the parcel.

Findings of Fact

1. The subject property is currently accessed by Pine Drive a substandard non-County-maintained road. Pine Drive will be abandoned when MDT constructs Humdinger Lane in the future.
2. US Highway 93 is a State-maintained roadway that is proposed to provide legal and physical access to Lots 1 and 2. Both lots will temporarily access off a common driveway until MDT constructs Humdinger Lane.
3. To ensure that legal and physical access will be provided solely by US Highway 93, a no ingress/egress zone shall be placed along the length of Pine Drive and the applicant shall abandon the existing access off Pine Drive. (*Conditions 6 and 11*)

Conclusion of Law

Legal and physical access will be provided on US Highway 93.

C. Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Section [3-4-2] of these regulations.

Findings of Fact

1. To provide legal and physical access, MDT is requiring the applicant to construct a temporary common driveway to access both lots from US Highway 93 to meet State standards. As a condition of approval, the applicant shall construct a common driveway to Lots 1 and 2 to meet state standards and demonstrate that MDT approves of the construction prior to final plat approval. (*Condition 8*)
2. The applicant is proposing to install an irrigation lateral line and water pumps to provide both lots with irrigation water. Section 3-4-4(a)(xxvi) requires that all improvements are completed prior to final plat approval.

Conclusion of Law

The final plat conditions and requirements or an improvements agreement and guaranty will ensure that all improvements are installed.

D. Assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.

Findings of Fact

1. The application states that the property has water rights from the North Channel of Bear Creek and from a groundwater well.
2. The application states that over 300 gallons per minute of irrigation water is available to the subject property from the North Channel of Bear Creek.
3. The surface water irrigation rights associated with the North Channel of Bear Creek are proposed to be split evenly between both lots. Section 3-4-4(a)(xx) requires that a master irrigation plan that meets the provisions in Section 3-1-5(a)(xxxv) and conforms to the irrigation plan presented in the preliminary plat application is submitted prior to final plat approval. Section 3-4-4(a)(xxvi) requires that all improvements are completed prior to final plat approval.
4. According to the applicant, water appropriated to the property has not been delivered for over 15 years. Though water has not been delivered to the site for over 15 years, the site still retains a beneficial right to use water.
5. One existing groundwater well is proposed to serve both Lots 1 and 2.

Conclusion of Law

The subdivider has provided appropriate documentation regarding the disclosure and disposition of all water rights appurtenant to the property

E. Assures that the requirements of 76-3-504(1)(k) MCA, regarding watercourse and irrigation easements as set forth in Chapter 5, have been considered and will be accomplished before the final plat is submitted.

Findings of Fact

1. According to the preliminary plat and master irrigation plan, there is a proposed 10-foot wide irrigation easement centered on a proposed irrigation ditch that traverses the western portion of the subdivision and thence traverses east to an existing pond in the southeastern portion of Lot 2.
2. Section 3-4-4(a)(ii)(V) requires that the irrigation easement be shown on the final plat.
3. The placement of structures or the planting of vegetation other than grass within the ditch easement is prohibited in 76-3-504(1)(k) MCA, without the written permission of the ditch owner. The applicant is the owner of the ditch as well as the last downstream user.

Conclusion of Law

With the requirements of final plat approval, the placement of irrigation easements will be accomplished.

F. Provides for the appropriate park dedication or cash-in-lieu, if applicable.

Finding of Fact

The proposal is for a two-lot minor subdivision.

Conclusion of Law

Parkland dedication is not required for minor subdivisions until October 1, 2007.

G. Overall Findings and Conclusions on Prerequisite Requirements

Finding of Fact

There is adequate evidence to demonstrate compliance with each prerequisite to approval.

Conclusion of Law

There is adequate evidence to demonstrate compliance with each prerequisite to approval.

COMPLIANCE WITH APPLICABLE REGULATIONS

Section 3-2-8(b) of the RCSR states that in approving, conditionally approving, or denying a subdivision application and preliminary plat, the BCC shall ensure the subdivision application meets Section 3-2-8(a) above, and whether the proposed subdivision complies with:

A. These regulations, including, but not limited to, the standards set forth in Chapter 5.

Findings of Fact

1. The lot layout as indicated on the preliminary plat appears to meet the design standards in Chapter 5 of the RCSR.
2. This development plan proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations.

Conclusion of Law

The preliminary plat and subdivision application meet all applicable standards required in the RCSR.

B. Applicable zoning regulations.

Findings of Fact

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres (recorded as Resolution 2038). The application appears to comply with Resolution 2038.
2. The property is not within one of the voluntary zoning districts in Ravalli County.

Conclusion of Law

This proposal complies with existing zoning regulations.

C. Existing covenants and/or deed restrictions.

Finding of Fact

There are no existing covenants or apparent deed restrictions on the property.

Conclusion of Law

There are no covenants or deed restrictions that apply to this property.

D. Other applicable regulations.

Finding of Fact

The subdivision proposal appears to comply with the following applicable regulations:

- Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA
- Montana Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA
- Ravalli County Subsurface Wastewater Treatment and Disposal Regulations
- Montana Standards for Subdivision Storm Drainage (DEQ Circular 8)
- Applicable laws and policies requiring permits related to development (U.S. Army Corps of Engineers, Bitterroot Conservation District, Ravalli County Road & Bridge Department, Montana Department of Transportation, Montana Department of Environmental Quality, etc.)

Conclusion of Law

The subdivision proposal appears to comply with other applicable regulations.

E. The MSPA, including but not limited to an evaluation of the impacts of the subdivision on the following criteria:

CRITERION 1: EFFECTS ON AGRICULTURE

Findings of Fact:

1. The proposed minor subdivision on 25.59 acres will result in 2 lots that range in size from 11.11 acres to 14.48 acres. The property is located approximately 1 mile south of the community of Victor off U.S. Highway 93. According to the application, the property is not currently being used for agricultural purposes, but was used for hay production and a horse pasture in the recent past.
2. The property is located in an area of residential and agricultural uses. To mitigate impacts on adjacent agricultural operations, a notification of proximity to agricultural operations shall be included in the notifications document filed with the final plat. (*Condition 1*)
3. Updated soils information from the *Soil Survey of the Bitterroot Valley Area, Montana* is in the application. Approximately 25% of the subject property has not been updated by the NRCS (NOTCOM on the map), and thus no current soils data is available. The "Special Soil Interpretations Report of the Bitterroot Valley", published in 1959 shows that soils in the currently unmapped area are not considered Prime Farmland or Farmland of Statewide Importance.
4. The Natural Resources and Conservation Service (NRCS) *Web Soil Survey for Ravalli County* identifies a soil type that is listed as Farmland of Statewide Importance on approximately 15% of the property (Map Unit 324B). Given that the lot is proposed for commercial use, it is not likely this soil type, which is entirely on Lot 2, will be used for agriculture.
5. Approximately 50% of the property is covered by soil types listed as Farmland of Local Importance. In a conversation with Jay Skovlin, local NRCS soil scientist, Mr. Skovlin stated that the Farmland of Local Importance classification was not intended to be used to determine important agricultural land. It is the lowest tier of farmland soils and the criteria have a low threshold so this classification does not show the most productive soils in the Valley. The classification will be used as a preliminary screening tool for the Farm and Ranch Land Protection Program. Mr. Skovlin will be writing the County a letter to summarize this information.
6. The property appears to support a wide variety of noxious weeds including cheat grass and spotted knapweed. (*Natural Environment – Vegetation*)
7. The applicant has provided a Noxious Weed Evaluation Form reviewed and approved by the Ravalli County Weed District (application). In addition, the application includes a "Ground Disturbance and Noxious Weed Management Plan" that prescribes several methods of managing noxious weeds on site. A covenant shall be included with the final plat submittal that mandates each lot owner control the growth of noxious weeds on their lot. (*Condition 2*)
8. The protective covenants, also filed with the final plat, shall include a provision requiring homeowners to keep pets confined to the house, a fenced yard, or in an outdoor kennel. (*Condition 2*)

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts of the subdivision on surrounding agricultural practices will be reduced.

CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES

Findings of Fact

1. According to the applicant, though the property has water rights, no water has been delivered to the site in over 15 years. (*Staff Note: Staff is concerned that because the water rights have not been used in over 15 years, the applicant no longer has beneficial use. Staff is contacting DNRC to confirm the applicant still has water rights.*)

2. There is an existing irrigation ditch traversing the southwest corner of proposed Lot 2. The application shows that this ditch will be abandoned in favor of a proposed ditch that will traverse the western property boundary of Lot 2 thence to the existing pond.
3. According to the application, there are no active downstream water users from this site.
4. The applicant submitted a master irrigation plan and irrigation agreement, which describes a mechanism to properly administer the water rights associated with the property. The application states that irrigation cisterns will be built on each of the lots to receive irrigation water from the pond. Each of the future landowners will be responsible for installing pumps in the cisterns to deliver water to each lot. Section 3-4-4(a)(xxvi) requires that the cisterns are installed prior to final plat approval.
5. Section 3-4-4(a)(xx) requires that a master irrigation plan that meets the provisions in Section 3-1-5(a)(xxxv) and conforms to the irrigation plan presented in the preliminary plat application is submitted prior to final plat approval. Section 3-4-4(a)(xxvi) requires that all improvements are completed prior to final plat approval.
6. A 10-foot wide irrigation ditch is proposed along the western boundary of Lot 2 and west to east along Humdinger Lane to the pond in the southeast corner of Lot 2. Section 3-4-4(a)(ii)(V) requires that the proposed irrigation easements be shown on the final plat.
7. To mitigate impacts on agricultural water user facilities, the developer shall provide evidence with the final plat submittal that the pond located in the southeast corner of Lot 2 has been permitted by the Department of Natural Resources (DNRC). (*Condition 12*)

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts on agricultural water user facilities will be reduced.

CRITERION 3: EFFECTS ON LOCAL SERVICES

Findings of Fact:

1. The Victor Rural Fire District was notified of the proposal. Although the District did not comment to date on this subdivision, other Fire Districts in the county have required the following water supply requirements: That the subdivider install a 1,000 gallon per minute water supply or a 2,500 gallon per lot water storage, or the subdivider contribute \$500 per lot and provide a letter from the Victor Rural Fire District that the contribution has been made prior to final plat approval. (*Condition 5*)
2. Both lots are proposed for commercial use. Because residential homes will not be constructed as a result of this subdivision, a voluntary monetary contribution was not offered by the developer.
3. Individual wastewater treatment systems and a shared well are proposed to serve the lots. The extent of the Victor Sewer District is not known. (*Staff Note: Staff is in the process of contacting the Victor Sewer District to determine whether or not this project could potentially hook into the municipal sewer.*)
4. The Ravalli County Sheriff's Office provides law enforcement services to this area. No comments have been received by the Sheriff's Office. The current level of service is not known, but it is generally understood that the Sheriff's Office is operating at an inadequate level of service. The applicant is not proposing any mitigation. To mitigate impacts on the law enforcement, the subdivider shall submit a (amount)-per-lot contribution to the Ravalli County Treasurer's Office to be deposited into account for the Sheriff's Office prior to final plat approval. (*Condition 13*) (*Staff Note: Since the current or planned level of service for the Sheriff's Office is unknown and the applicant has not proposed any mitigation, Staff recommends the BCC negotiate an amount per lot with the applicants.*)
5. Ambulance services will be provided by Marcus Daly Memorial Hospital EMS Department. The Department was contacted but no comments have been submitted.
6. Bitterroot Disposal provides service to this site.
7. The application states that Qwest, Ravalli Electric Cooperative, and NorthWestern Energy will provide utilities to the subdivision.

8. The Institute of Traffic Engineers "Trip Generation" manual indicates that approximately 39 vehicles per 1,000 square feet of building can be expected to visit a commercial business specializing in building materials and lumber. It is estimated at build-out that this subdivision will generate a total of 171 additional vehicular trips per day, assuming 39 trips per day per 1,000 square feet of business, 2.5 trips per day per employee, and three to four trips per day from delivery vehicles.
9. The existing buildings on Lot 1 currently access off Pine Drive. Because MDT is proposing to abandon Pine Drive and construct Humdinger Lane, the applicant is proposing a temporary common access off US Highway 93 until Humdinger Lane is complete.
10. MDT is requiring the applicant to construct a temporary common driveway to access both lots from US Highway 93 to meet State standards. As a condition of approval, the applicant shall construct a common driveway accessing Lots 1 and 2 to meet State standards and demonstrate that MDT approves of the construction prior to final plat approval. (*Condition 8*)
11. To mitigate impacts on the local road system, the final plat shall show a no-ingress/egress zone along the US Highway 93 and Pine Drive frontages of the subdivision, excepting the Montana Department of Transportation (MDT) approved approach for the common access. A notification of this limitation of access shall be included in the notifications document. (*Conditions 1 and 6*)
12. To mitigate impacts on local services, the subdivider shall abandon the existing access off Pine Drive. (*Condition 11*)
13. The subdivision is located over the Victor Landfill Plume, which precludes the development of new groundwater sources. A well exists and is permitted on Lot 1. Lot 2 will receive its drinking water from the well on Lot 1, and an easement is shown on the plat over the location of the water line to Lot 2. In order to ensure each lot has access to water and to mitigate impacts on local services, a notification of utility easements shall be filed with the notifications document. (*Condition 1*)
14. To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plat shall address these services/facilities. (*Conditions 2 and 3*)

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts of the subdivision on local services will be reduced.

CRITERION 4: EFFECTS ON NATURAL ENVIRONMENT

Findings of Fact:

1. The property currently accesses off Pine Drive, a privately-maintained gravel road. The applicant is now proposing that both lots access off Highway 93. The common access is required by MDT to be paved and its side slopes seeded with certified weed-free seed. Paving this access and seeding the side slopes will help reduce the level of fugitive dust created as a result of the subdivision. (*Condition 8*)
2. In 2004, the Department of Natural Resources and Conservation (DNRC) established by Order the Bitterroot Valley Sanitary Landfill Controlled Groundwater Area, commonly known as the Victor Landfill Plume. The entire subject property is located above the Landfill Plume.
3. The documentation ordering the establishment of the Controlled Groundwater Area identifies that shallow groundwater within the site is contaminated with chloroform, methylene chloride, tetrachloroethene, and vinyl chloride in "amounts which exceed federal and state standards for human consumption".
4. The well currently used on the subject property was drilled by the National Institute of Health between 1995 and 1997. In 2004, the DNRC issued a modification to the original report that states that this and other wells above the Landfill Plume were built using "specific construction standards...to ensure [the wells] would provide a potable water source from deeper, uncontaminated aquifers". (Application)

5. The DNRC will not allow the construction of new wells on properties located above the Landfill plume. The applicant is proposing that the existing well on Lot 1 be a shared well with Lot 2. A notification of the Victor Landfill Plume shall be shown on the final plat and included in the notifications document provided with the final plat. (*Conditions 1 and 9*)
6. There are several structures on the property, including an office with sanitary facilities and a shop building with sanitary facilities. There is an existing valid septic permit for both buildings.
7. An individual wastewater treatment system is proposed for Lot 2. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (*Exhibit A-4*). A Certificate of Subdivision Plat Approval from Montana Department of Environmental Quality (DEQ) is required to be submitted with the final plat.
8. The property is located adjacent to the North Fork of Bear Creek, which drains an area greater than 15 square miles. A floodplain analysis waiver was granted by the Ravalli County Floodplain Administrator (*application*), as the applicant is proposing a generous no build/alteration zone away from the creek.
9. The North Fork of Bear Creek forms the northern property boundary of the subject property and proposed Lot 2. The Montana Fish, Wildlife, and Parks Fisheries Information System identifies the North Fork of Bear Creek as a "moderate" fisheries resource.¹
10. To protect the riparian area associated with the North Fork of Bear Creek, a no build/alteration zone is shown on the preliminary plat. The no build alteration zone along the North Fork of Bear Creek shall be shown on the final plat as it is shown on the preliminary plat. No new structure, with the exception of fences, may be constructed in this area. No new utilities, may be constructed in this area. No fill may be placed in this area and the vegetation shall be retained in its natural condition. Roads, trails, and utility crossings through this area are not permitted. A notification of the no build/alteration zone shall be included in the notifications document. (*Condition 7*)
11. Riparian vegetation is located in the northern portion of Lot 2 along the North Fork of Bear Creek. In a site visit on July 17, 2007, staff confirmed that typical vegetation in this riparian area include quaking aspen, cottonwood, willow, alder, pine and various grasses and sedges.
12. The Montana Fish, Wildlife, and Parks (MFWP) recommended covenants designed to protect the riparian area associated with the North Fork of Bear Creek from damage. To mitigate impacts to the natural environment, the covenants proposed by MFWP shall be included with the final plat. (*Condition 2*)
13. A pond is located in the southeastern portion of proposed Lot 2. A no-build alteration zone is shown on the preliminary plat surrounding the pond to protect any wetland areas. To mitigate impacts on the natural environment, the no build/alteration zone surrounding the pond shall be shown on the final plat as it is shown on the preliminary plat. (*Condition 7*)
14. To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (*Condition 2*)
15. The application states that there are no known sites of historical significance on the property. To mitigate possible impacts on sensitive historical, cultural, archaeological, paleontological, and/or scenic sites, the following statement shall be shown on the final plat: "If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the developer will contact the State Historic Preservation Office to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate". (*Condition 10*)
16. The majority of the property appears to be comprised of non-native grasses and weeds. A large majority of the undeveloped property is covered in cheat grass and knapweed.
17. An approved noxious weed and vegetation control plan is required to be filed with the final plat for each phase. According to MCA 7-22-2152, any person proposing a development that needs state

¹Data source: FWP Montana Fisheries Information System
(<http://maps2.nris.mt.gov/scripts/esrimap.dll?name=MFISH&Cmd=INST>)

or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, the plan shall be submitted to the weed board for approval by the board. The subdivider has proposed a provision in the covenants that the owners of each lot control noxious weeds. To mitigate impacts on the natural environment, a noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (*Condition 2*)

18. According to the Montana Natural Heritage Program there are no plant species of concern located in the section in which this property is located.

Conclusion of Law:

Impacts from this subdivision on the natural environment will be reduced with the mitigating conditions and requirements of final plat approval.

CRITERION 5: EFFECTS ON WILDLIFE & WILDLIFE HABITAT

Findings of Fact:

1. The applicant is proposing a no build/alteration along the length of the North Fork of Bear Creek, an area where Brook Trout have been found.² In addition to providing habitat for fish, riparian areas can act as wildlife corridors for big game. The applicant shall be required to show the no-build/alteration zone on the final plat as it is shown on the preliminary plat. Notification of the no-build/alteration zone shall be included in the notifications document. (*Conditions 1 and 7*)
2. The property is not located within big-game winter range, as identified by Montana Fish, Wildlife, and Parks.
3. The property was identified as an area with the following sensitive species: A Cave Obligate Amphipod (*Stygobromus montanensis*), Bobolink (*Dolichonyx oryzivorus*), and the Westslope Cutthroat Trout (*Oncorhynchus clarkia lewisi*). Because there is no habitat on the property suitable for the Bobolink or Cave Obligate Amphipod, and because the subdivider is placing a generous no build/alteration zone on the North Fork of Bear Creek, the subdivider requested and received a waiver from the requirement to submit a sensitive species report. (*Exhibit A-1*)
4. A letter from Montana Fish, Wildlife, and Parks (FWP) recommends that the Living with Wildlife provisions be included with the covenants for this subdivision. (*Application*) (*Condition 2*)
5. To mitigate the impacts of light pollution on wildlife, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (*Condition 2*)

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts on Wildlife & Wildlife Habitat will be reduced.

CRITERION 6: EFFECTS ON PUBLIC HEALTH & SAFETY

Findings of Fact:

1. To mitigate impacts on public health & safety, the subdivider shall apply for County-issued addresses, and a provision requiring property owners to post County-issued addresses at their driveways shall be in the covenants. (*Conditions 2 and 4*)
2. With the conditions and requirements of final plat approval, access to the subdivision will be adequate for Public Health & Safety. (*Effects on Local Services and Conditions 1, 2, 4, and 6*)
3. To mitigate impacts on public health and safety, the final plat shall show a no-ingress/egress zone along the US Highway 93 and Pine Drive frontages of the subdivision, excepting the Montana Department of Transportation (MDOT) approved approach for the common access to

²Data source: FWP Montana Fisheries Information System
(<http://maps2.nris.mt.gov/scripts/esrimap.dll?name=MFISH&Cmd=INST>)

Lots 1 and 2. A notification of this limitation of access shall be included in the notifications document. (*Conditions 1 and 6*)

4. The applicant is proposing to provide access to Lots 1 and 2 from US Highway 93. To mitigate impacts on the public health and safety, the subdivider shall construct a temporary common access to meet State standards and provide evidence that MDT approves of the access. (*Condition 8*)
5. The proposed subdivision will be served by the Victor Rural Fire District, the Ravalli County Sheriff's Office, and Marcus Daly Memorial Hospital EMS Department. (See *Effects on Local Services*) Conditions 5 and 13 will mitigate public health and safety impacts on the Fire District and Sheriff's Office.
6. There are several structures on the property, including an office building with sanitary facilities and a shop also with sanitary facilities. Both buildings have valid septic permits and followed the rules in place when they were built, which was prior to subdivision for lease or rent review in Ravalli County.
7. A shared well and individual wastewater treatment system is proposed for the new building on Lot 2. (*Natural Environment*)
8. The documentation ordering the establishment of the Controlled Groundwater Area identifies that shallow groundwater within the site is contaminated with chloroform, methylene chloride, tetrachloroethene, and vinyl chloride in "amounts which exceed federal and state standards for human consumption".
9. The well currently used on the subject property was drilled by the National Institute of Health between 1995 and 1997. In 2004, the DNRC issued a modification to the original report that states that this and other wells above the Landfill Plume were built using "specific construction standards...to ensure [the wells] would provide a potable water source from deeper, uncontaminated aquifers". (Application)
10. The DNRC will not allow the construction of new wells on properties located above the Landfill plume. The applicant is proposing to share the water from the existing well on Lot 1 with Lot 2. A notification of the Victor Landfill Plume shall be shown on the final plat and included in the notifications document provided with the final plat. (*Conditions 1 and 9*)
11. To mitigate impacts to public health & safety, a notification of proximity to the North Fork of Bear Creek shall be included in the notifications document. The notification shall recommend that property owners obtain flood insurance. (*Condition 1*)
12. There is a prevalence of radon in the County and to mitigate impacts on public health & safety, the covenants shall include a statement regarding radon exposure. (*Condition 2*)
13. The preliminary plat and soils map indicate that the subdivision may have soils rated as very limited for road and building construction. To educate property owners and to mitigate potential impacts of this subdivision on public health & safety, a notification of the potential for very limited soils shall be included in the notifications document filed with the final plat. A reduced plat showing the approximate locations of soils rated as very limited for roads and building construction and descriptions of the very limited soils in question shall be attached to the notifications document as an exhibit. (*Condition 1*)
14. Standing water is recognized as providing breeding grounds for mosquitoes³, which are known carriers of West Nile Encephalitis, commonly known as the West Nile Virus. The pond located on Lot 2 could support the propagation of mosquitoes, and thus West Nile Virus. To notify potential land owners of the West Nile Virus, a statement shall be included in the notifications document. (*Condition 1*)
15. To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (*Condition 2*)

Conclusion of Law:

³Data source: American Mosquito Control Association
(<http://www.mosquito.org/mosquito-information/biology.aspx>)

The mitigating conditions and requirements of final plat approval will address impacts on public health & safety.